

**Stannah Stairlifts, Inc. and Local 4, International
Union of Elevator Constructors, AFL-CIO.**
Cases 1-CA-33867 and 1-RC-20418

October 31, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

On June 13, 1997, Administrative Law Judge Robert T. Wallace issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief. The General Counsel and the Respondent also filed a joint motion requesting reconsideration and clarification of the judge's decision.

The National Labor Relations Board has considered the decision in light of the exceptions and briefs, including the joint motion, and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order except as explained below.

In his decision, the judge ruled on the unfair labor practice allegations and a challenged ballot, but he did not address the Employer's "Objections and Additional Objection" to the representation election, which were consolidated with the unfair labor practice proceeding. The General Counsel's and the Respondent's joint motion requests that the judge rule on the election objections.

In light of the joint motion, we have decided to sever the representation case and remand the proceeding to the judge to address the election objections.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

IT IS FURTHER ORDERED that Cases 1-CA-33867 and 1-RC-20418 are severed and Case 1-RC-20418 is remanded to Administrative Law Judge Robert T. Wallace to prepare and serve on the parties a supplemental decision addressing the Employer's "Objections and Additional Objection" to the election in Case 1-RC-20418. Copies of the supplemental decision shall be served on all parties after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Don Firenze, Esq., for the General Counsel.

John F. Adkins and Sandra E. Kahn, Esqs. (Bingham, Dana & Gould), of Boston, Massachusetts, for the Respondent.
Paul Kelly, Esq. (Segal, Roitman & Coleman), of Boston, Massachusetts, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge. These cases were tried in Boston, Massachusetts, on June 19-20, 1996.¹ In Case 1-CA-33867, the charge was filed on February 26 and the complaint issued on May 21.

At issue in Case 1-CA-33867 is whether the Respondent interrogated, threatened, and offered benefits to employees in violation of Section 8(a)(1) of the National Labor Relations Act (the Act) and whether it discharged, and otherwise disciplined, employee Leo Locurto in violation of Section 8(a)(3). The issue in Case 1-RC-20418 is whether Locurto's vote should be counted in a representation election.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering oral argument of the General Counsel and a brief filed by the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Massachusetts corporation, sells, installs, and services stairlifts from its facility in Hopkinton, Massachusetts, and, in connection therewith, annually derives gross revenues in excess of \$500,000.³ It admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

At all pertinent times, the Respondent's complement of nonclerical hourly employees consisted of three installers (Dale Laughlin, Leo Locurto, and Joe Panzera) and one warehouseman (Tony Cardarelli). For purposes of an election held on March 20, the four employees were held to constitute an appropriate collective-bargaining unit. At the election, two employees voted for representation by the Union and one voted against. The fourth ballot (Locurto's) was challenged by the Board agent because his name did not appear on the eligibility list furnished by the Company. He had been discharged on February 28. Whether his vote should be counted depends on determination of the lawfulness of his discharge. The vote could be decisive against union representation only if he is found eligible and his vote is negative.

III. ALLEGED UNFAIR LABOR PRACTICES

By February 5, Laughlin, Locurto, and Panzera had signed cards authorizing union representation; and by facsimile sent that day a Board representative advised the Respondent's general manager (Michael Charteris) that a certification peti-

¹ All dates are in 1996 unless otherwise indicated.

² The General Counsel's unopposed motion to correct the transcript, dated July 10, is granted.

³ The Respondent is a wholly owned subsidiary of a company based in England, Stannah Stairlifts, Ltd.

tion had been filed and that there would be a hearing in connection therewith on February 20.

Larry Edsall was hired as the Respondent's operations manager on February 5. Two days later he made a brief appearance at a home in Brighton, Massachusetts, where an installation was in progress. Laughlin arrived after Edsall. He claims to have overheard Edsall say to Panzera in the kitchen: "I hope you haven't been pushed in a direction you don't want to be in." Laughlin also claims that a short time later as Edsall was leaving he made a passing comment that he hoped "no one was being coerced." Edsall denies making either of the statements, asserting that Laughlin arrived at the residence just as he was driving off. Both Locurto and Panzera testified that Laughlin was present in the house while Edsall was there, and I credit Laughlin's account, finding it probable that Edsall was aware of the unionization drive and suspected that the installers were union supporters.⁴ However, Edsall's statements amount to nothing more than an expression of opinion given in a coercion-free context. *Blue Flash Express*, 109 NLRB 591 (1954); and *Dieckbrader Express*, 168 NLRB 867 (1967). Accordingly, allegations that the incident involved unlawful interrogation and of job loss will be dismissed.

Later that week Laughlin approached warehouseman Cardarelli and told him that "Shit was going to hit the fan" because he, Panzera, and Locurto had joined the Union. Admittedly, he also told Cardarelli that "if . . . we won the election and he didn't want to become part of the Union . . . he might lose his job." Cardarelli did not offer to join them. Thereafter he was excluded from their "shop talk" and felt shunned. Within a few days he sought out Laughlin and told him that despite their differences he hoped they would stay friends.

Early in the morning on February 12—a day (Monday) on which an "Installation Supervisor" (Steve Marriner) arrived at the office from England to instruct Edsall in his new duties—a minor crisis erupted when Locurto refused to accept an assignment to install a "stand-up" stairlift, telling Edsall standups were not legal in Massachusetts. Balked, Edsall re-assigned him to another job. In late afternoon Edsall advised Locurto via mobile voice mail that no work was available for him on the next day. Locurto showed up at the office at 8 a.m., claiming he was unaware that his vehicle phone had a voice mail capability.⁵ Locurto left after receiving 2 hours' transit pay.

Later that day Edsall learned that the Company had not received a check entrusted to Locurto by a customer. He reached him at home and inquired about the matter. Locurto

responded with a loud torrent of abuse the tenor of which is reflected in notes contemporaneously recorded by Edsall, as follows:

I am tired of being accused of missing checks. Mike [general manager Charteris] and I have had these discussions before, and I have had it with Mike. I am going to take care of him and if you continue I will take care of you. You don't know who I am. You would be amazed at all the people I know. I have the State on my side. I have the union on my side. . . . I will destroy Mike and in 30 days there won't be any Stannah. So if I were you I would be looking for another job. I am sick and tired of these foreigners coming over here and doing our jobs like that guy "Steve" [sic] Marriner.

Edsall waited until Locurto calmed down and again asked about the check. Locurto told him he followed regular practice and put it "in the box" at the office. Edsall then informed Locurto that he should stay away another day as there was no work available for him until Thursday. Based on Edsall's account of the incident, Charteris issued a "FINAL WRITTEN WARNING" to Locurto on February 16. In the concluding paragraph, he advised him that any further instances of such outbursts or insubordination would be cause for discharge. Although entitled to appeal under Stannah's progressive disciplinary rules, Locurto opted not to do so.⁶

The 2-day layoff probably was not warranted by lack of work. There is no history of prior layoffs. Moreover, there was a backlog of "free" service calls required under warranties and this type of work normally was assigned during slack periods. However, I am not persuaded that the layoff had anything to do with union involvement on the part of Locurto. Instead, it appears likely that Edsall acted to chastise Locurto for refusing the standup installation job on February 12 and for his outburst on February 13—matters not within the purview of the Act. In these circumstances, allegations that the calls involved implied threats of layoffs and job loss, and that Locurto was discriminatorily issued a warning and laid off because his sympathy and support for the Union, will be dismissed.

Installation Supervisor Marriner, a "management team" member, was sent over from England principally to train newly hired Operations Manager Edsall. On prior visits he

⁴Panzera was not present in the house when Edsall left, but he corroborates Laughlin's testimony as to the "kitchen" comment. For his part, Locurto asserts that in parting Edsall told him, Panzera, and Laughlin that "he hoped we knew what we were doing joining the union because unions have reputations of a lot of layoffs [and] . . . Stannah would not tolerate any union." Neither Laughlin nor Panzera recall those comments and both disclaim use of the word "union" by Edsall. Here, and at other points, Locurto appears to exaggerate and shape the facts to suit his purposes and I decline to accept his testimony.

⁵A Bell Atlantic billing record shows over 60 voice mail messages were left on Locurto's mobile phone during the period January 17 through February 11, and there is no indication that he had any problem receiving them.

⁶At trial, Locurto denied making threats or disparaging remarks and claimed, among other things, that at the end of the call Edsall "kind of chuckled that I was being out of work and he asked me how I liked the Union now. [And] . . . made accusations like, "Your family will pay for this because you'll be out of work. You won't be able to pay your rent or child support." In an affidavit previously taken by a Board agent he was more expansive, quoting Edsall as stating: "Listen to me. If you and your friends think you're going to unionize this shop, you have another think coming . . . Stannah will not pay mechanics \$30 an hour to be in the Union . . . They would just as soon break your legs than [let] you come in as a union member . . . Your kids are going to pay for it because you are a stupid guinea bastard." These "extra" details are not of a type likely to be forgotten, and it appears probable that Locurto did not mention them in his direct testimony perceiving that doing so would not enhance his veracity. In any event, I view Edsall's account as more reliable and have credited it.

had socialized regularly with Laughlin and the two had become good friends. Indeed on his last visit he vacationed at Laughlin's place on Cape Cod and got to know his wife and children. But on this visit, Laughlin—assertedly for reasons unrelated to the Union⁷—decided to have nothing to do with Marriner.

According to Laughlin, Marriner spoke to him privately on three occasions in the warehouse over a 4-day period in mid-February. During the initial conversation he reminded Laughlin of past good times and how much he wanted to continue their friendship, adding that “because of the Union he wasn’t allowed to be friends with me or to give me Christmas presents he had brought over for my children.” He went on to say, “Stannah had never been union, would never be union, that I would lose my job . . . that they would bring outside contractors in to take my position . . . would close shop and move to another State or close down completely and just move right out of the country before they would go union . . . that if I would change my mind and the old Dale [Laughlin] were to come back I could be forgiven and brought back in with open arms by Mike [Charteris].” Also—“to give me an out . . . so that I could turn tail and run back—” he kept blaming Leo [Locurto] for being the agitator, stating that he (Locurto) and Panzera were going to be fired eventually. He claims the second and third conversations were basically “exact” repetitions of the first with Marriner “saying the same thing over and over.”⁸

For his part, Marriner states that Laughlin rebuffed his several overtures to resume their friendship; and he denies making any of the statements attributed to him.

I decline to credit Laughlin's account. He harbors a great deal of personal hostility toward Stannah officials,⁹ including Marriner, and I am not persuaded that his account is untainted thereby. Therefore, the allegations that Marriner told him Stannah would not tolerate a union and threatened him with job loss if he voted for the Union (and rewards if he voted against) will be dismissed.

At 8 a.m. on Friday, February 23, warehouseman Cardarelli opened the warehouse doors, including the rollup

dock entrance, and then went to his desk 60 feet away. He was resentful of being shunned by the installers and made the butt of their jibes;¹⁰ and since February 14 some of his specialized tools had disappeared, signs he had placed in the loading dock area had been turned upside down, and he had received several “hang-up” phone calls. He suspected those happenings were related to his failure to support the Union.

At 8:15 a.m. while the installers were at the dock loading a van, two company officials (Del Hoadley and Marriner) arrived and proceeded toward the dock entrance, with Hoadley carrying a supply of coffee and doughnuts. Laughlin yelled to them “Are those for us?” Hoadley replied, “None for Americans. You are bad boys.” The installers laughed and Laughlin called back, “Did you bring some for Tony [Cardarelli]?” When Hoadley said, “Yes,” Laughlin joked “So Tony isn’t an American?” Again, the installers laughed.

Cardarelli, however, overheard the latter remark and laughter and became enraged. He ran out to the dock where Panzera and Locurto were standing¹¹ and shouted: “I have nothing against either one of you. You want fucking something to say to me, say it to my fucking face.” Locurto yelled: “Fuck you!,” bellied up to Cardarelli, and with hands rigidly at his sides kept taunting: “Hit me!, Hit me!, Hit me! . . . Why don’t you fuckin hit me boy.” Cardarelli, apparently heeding Marriner’s warning: “Tony he wants you to get at him,” replied only with words: “Go fuckin do your job . . . Don’t fucking talk behind my back. I don’t like it. . . . I’d love to fucking hit you. . . . Come on around here around five o’clock tonight.”¹² All the while Locurto kept up the “hit me” taunts. Cardarelli then turned and walked back toward his desk. Locurto followed urging him to fight off the premises calling him a chicken and a faggot. Apparently agreeing to fight, Cardarelli followed Locurto who opened the exit door by slamming his shoulder into it. With Locurto outside, Cardarelli proceeded to shut the door, saying, “If I’m not there start without me” and again walked toward his desk.

Locurto was not finished. He ran around to the dock platform area and, looking in at Cardarelli, screamed: “I’m going to get a van full of niggers to come down and kick the shit out of all you Englishmen. I’ll hunt you down. They will find you dead somewhere. That’s the way the Sicilians do it.” The whole incident lasted about 3 minutes.¹³

⁷ Laughlin claims he decided to keep his distance from Marriner because during his last visit Marriner abandoned a girl he had impregnated and Laughlin no longer regarded him as a decent person. However, he never mentioned that reason to Marriner.

⁸ On cross-examination Laughlin adds a detail. He claims Marriner during the third conversation also said, “he had come over from England for the specific reason to try to steer me away from the Union.”

⁹ Among other things Laughlin, on April 19 in a mobile phone call to Edsall punctuated by his screaming and frequent use of the “F” word, refused a work assignment, stating: “I’m not doing anything unless its in writing. I don’t like your fucking attitude. If you want me to do anything, put it in writing. That’s what you told me to do. You know I’ve had it with you and Mike [Charteris]. I know Mike is pulling the strings, but you are getting as bad as he is. Larry [Edsall], I don’t have anything personal against you, but I’ve had it with Mike and Peter Gilbert [a vice president of Stannah stationed in England]. I’m not going to make threats like Leo [Locurto] did. I’m just going to do it. If you think the last article in the paper was bad, wait till you see the next one. I’ve had it with these fucking pussy Englishmen, any [sic] you’re becoming a pussy just like them.” Then, after accusing Gilbert of using company money to pay for his whores, Laughlin continued: “I don’t want to hurt the Stannah Company. I’m going to ruin Peter Gilbert.”

¹⁰ For example. Panzera when walking by Cardarelli in the warehouse would sing “Secret Agent Man” while Laughlin and Locurto would chuckle as he did so. Indeed, they chuckled as Panzera testified about the matter.

¹¹ Laughlin was away from the dock area repositioning his van. He returned about 30 seconds after the altercation began.

¹² At this point a tape of the conversation runs out after recording 1 minute of the encounter. Cardarelli claims he placed the recorder in a bag near the door and activated it at 8 a.m. to verify his suspicions of harassment.

¹³ Locurto “guesses” Laughlin “said something about Cardarelli ‘being office or English’ or whatever” and that Laughlin’s remark “hit a bad nerve” in Cardarelli. He claims Cardarelli grabbed him from behind, pulled him around, stood on my toes, and yelled, “If you have anything to say, say it to my face . . .” and that he [Locurto] pulled himself away and shouted back “I have no problems”; that Cardarelli then said, “I’m going to kick your ass, punch your face in and mop the dock floor with you” and kept repeating he was going to hit me; that I replied, “I don’t want to fight. If I swing back at you, there’s a possibility I’ll lose my job . . . if

When Charteris arrived an hour later, Cardarelli related to him what happened, and later in the day reported the threats to the police. On the following Monday, Cardarelli was given a written warning by Charteris for engaging in verbal abuse during the incident. At the same time Locurto was suspended “pending a final decision” for making threats. Two days’ (February 28) later the suspension was converted to discharge.

I find that Stannah had ample reason for the discharge and that Locurto’s union involvement played no part in the decision. The circumstance that a lesser punishment was meted out to Cardarelli does not involve discriminatory treatment. Cardarelli’s principal dereliction (verbal abuse) is far less serious than Locurto’s (death threat) and the latter had previously received a final written warning while the former had not.

On February 29, 20 days before the scheduled representation election, Stannah’s president (David Walton) arrived at the Hopkinton office after a business visit to Toronto, Canada. After greeting everyone in the office he went out to the warehouse to greet senior installer Laughlin who he had met on prior visits.

According to Laughlin, after saying, “Hello,” Walton inquired, “You’re our longest employee, I guess?” Laughlin agreed and then added, “It’s too bad that things have come to the point where we are now, but we just feel insecure in our jobs.” He specifically mentioned Locurto’s suspension as being unfair, and asked Walton to look into the matter. Walton replied that he knew Mike (Charteris) would not be unfair and went on to praise Laughlin as a loyal and valued employee, adding that “[i]f I were to remain a loyal employee I would be greatly rewarded . . . this is a family business, and we don’t need outside people to resolve internal problems.”

At that point, Panzera (who had been working a short distance away) came over and told Walton that he was not being treated fairly and was not getting the respect he deserved. The conversation ended at that point with Walton saying he would investigate and take what we said into consideration.

you want . . . this badly . . . to fight me, we should take it down the street”; that Marriner “over and over” urged Cardarelli to “Go ahead and hit him,” adding in between “that will teach him to go union”; that Cardarelli agreed to go down the street but then “pushed me” through the door, saying, “[I]f I’m not there, start without me”; and that he (Locurto) went back to loading his van ignoring Cardarelli who continued shouting at me. Laughlin and Panzera support Locurto’s account with some exceptions. Contrary to Locurto, Laughlin states that Locurto kept up a rhythmic chant “Hit me, hit me”; and that after being pushed out the door by Cardarelli, Locurto ran around to the dock platform and taunted Cardarelli for being a “pussy” for not fighting. Panzera recalls that at the end, Locurto, in a loud tone of voice, said to him and Laughlin: “Ever hear the sound of a baseball bat makes when it hits a head.” I have credited Cardarelli’s account as more probable. Here, too, I distrust Locurto’s account. Among other things, it significantly differs from the agreed-on tape transcript.

Panzera claims he joined Walton and Laughlin after overhearing Walton say, “People that have been with Stannah and—faithful employees—they’re taken care of down the road”; that he (Panzera) complained that talking to Mike was like talking to a brick wall, that Mike always says, “No, no, no” when employees discuss things with him (like need for better tools); and that Mike favors the sales staff over installers. In that regard, Panzera told Walton about how at the Christmas party Mike praised the sales staff and ignored the installers’ contribution. Also, he recalls that Walton replied that “he couldn’t understand how it came down to this point.”

Walton’s account generally accords with that of Laughlin and Panzera. But Walton recalls that Laughlin’s principal concern was whether Stannah’s efforts to obtain a court ruling that stairlift installation did not require use of licensed mechanics would result in his being laid off or discharged in favor of someone who would do his job for less money. He assured Laughlin that Stannah had a corporate culture of loyalty to employees, that he “didn’t need to fear deregulation for his job,” that Stannah would not sack long-term loyal employees, and that “loyalty was a two-way street,” i.e., he could expect the Company to be loyal in return.

I decline to find that the conversation involved a promise that loyal employees would be rewarded if they rejected the Union, as alleged in the complaint. Walton’s statements, even if Laughlin and Panzera are credited,¹⁴ amount to nothing more than a vague assurance that Stannah would do all it could to retain hard working employees and to treat them fairly. This conclusion is reinforced by the absence of any showing of threats or coercion to employees because of their union sympathies. Further there is no indication that Walton equated employee “loyalty” with antiunionism. See *Galloway School Lines*, 308 NLRB 33, 37 (1992).

CONCLUSION OF LAW

For the reasons stated above, I conclude that the evidence fails to establish any violation of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁵

ORDER

The complaint is dismissed; and the proceeding in Case 1–RC–20418 is remanded to the District Director for disposition consistent with this Order.

¹⁴ If pressed I would credit Walton over Panzera and Laughlin, basically because I have no confidence in their veracity for reasons stated earlier in this decision.

¹⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.